APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/932,070	08/17/2001	Vincentius Paulus Buil	NL000434	5575

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EXAMINER
WASSUM, LUKE S

ART UNIT	PAPER NUMBER
2167	

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

		Application No.	Applicant(s)
Office Action Summary		09/932,070	BUIL ET AL.
		Examiner	Art Unit
		Luke S. Wassum	2167

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>25 May 2004</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-13* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9 and 11-13* is/are rejected.

7)☒ Claim(s) *10* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *25 May 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Response to Amendment

1.   The Applicants' amendment, filed 25 May 2004, has been received, entered into the record, and considered.

2.   As a result of the amendment, claims 1 and 9-11 have been amended. Claims 1-13 remain pending in the application.

The Invention

3.   The claimed invention is a system for browsing a collection of information units, wherein information units are randomly presented to the user, based on whether or not they meet user-defined attribute criteria. One embodiment of the invention is a system for distributing music or video files over the Internet.

Priority

4.   Acknowledgment is made of applicant's claim for priority under 35 U.S.C. 119(a)-(d) based upon an application filed in the EPO on 28 July 2000. A claim for priority under 35 U.S.C. 119(a)-(d) cannot be based on said application, since the United States application was filed more than twelve months thereafter.

Drawings

5.   The Applicants' proposed drawing corrections, filed 25 May 2004, are approved by the examiner. New corrected drawings in compliance with 37 CFR 1.121(d) are now required in this

application incorporating the proposed drawing corrections. The corrected drawings are required in

reply to the Office action to avoid abandonment of the application. The requirement for corrected

drawings will not be held in abeyance.

Specification

6.   In view of the Applicants' amendments to the specification, the examiner withdraws all

pending objections to the specification.

Claim Objections

7.   In view of the Applicants' amendment to claim 11, the examiner withdraws the objection to

claim 11.

Claim Rejections - 35 USC § 112

8.   In view of the Applicants' amendments to claims 9 and 10, the examiner withdraws the

pending claim rejections under 35 U.S.C. § 112.

Claim Rejections - 35 USC § 103

9.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness

rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section
> 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the
> subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary
> skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the
> invention was made.

10.   The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966),

that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a)

are summarized as follows:

1.   Determining the scope and contents of the prior art.
2.   Ascertaining the differences between the prior art and the claims at issue.
3.   Resolving the level of ordinary skill in the pertinent art.
4.   Considering objective evidence present in the application indicating obviousness or
      nonobviousness.

11.   This application currently names joint inventors. In considering patentability of the claims

under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was

commonly owned at the time any inventions covered therein were made absent any evidence to the

contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and

invention dates of each claim that was not commonly owned at the time a later invention was made

in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35

U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12.   Claims 1-5, 9 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cluts

(U.S. Patent 5,616,876) in view of **Looney et al.** (U.S. Patent 5,969,283).

13.   Regarding claim 1, **Cluts** teaches a system for browsing a collection of information units as

claimed, comprising presentation means for presenting at least one of said information units (see

discussion of the ability to listen to songs, col. 4, lines 38-54), and attribute means for associating a

respective one of said information units with an attribute value (see discussion of the classification

of content, col. 14, lines 28-50), wherein the system comprises random selection means for

randomly selecting a unit for presentation whose attribute value meets a criterion (see col. 18, lines

51-54).

Cluts does not explicitly teach a system wherein the system includes a random selection

means for automatically selecting and presenting a unit without interaction by a user.

Looney et al., however, teaches a system wherein the system includes a random selection

means for automatically selecting and presenting a unit without interaction by a user (see disclosure

that music can be played back in random order, in the Abstract, also in col. 2, lines 5-18, also in col.

10, lines 49-57).

It would have been obvious to one of ordinary skill in the art at the time of the invention to

include a randomization function as claimed, since such functionality is desirable to prevent the

monotony of being presented the same songs in the same order, and further because such

functionality has been well known and common in the art for many years, such as the randomize

function on CD players.

14.   Regarding claim 11, **Cluts** teaches a method of browsing a collection of information units as

claimed, comprising a step of presenting an information unit from said collection (see discussion of

the ability to listen to songs, col. 4, lines 38-54) and a step of associating a respective information

unit with an attribute value for at least a first attribute (see discussion of the classification of content,

col. 14, lines 28-50), wherein the method comprises a step of randomly selecting a unit for

presentation from information units whose attribute values meet a criterion for said first attribute (see col. 18, lines 51-54).

Cluts does not explicitly teach a system wherein the system includes a random selection means for automatically selecting and presenting a unit without interaction by a user.

Looney et al., however, teaches a system wherein the system includes a random selection means for automatically selecting and presenting a unit without interaction by a user (see disclosure that music can be played back in random order, in the Abstract, also in col. 2, lines 5-18, also in col. 10, lines 49-57).

It would have been obvious to one of ordinary skill in the art at the time of the invention to include a randomization function as claimed, since such functionality is desirable to prevent the monotony of being presented the same songs in the same order, and further because such functionality has been well known and common in the art for many years, such as the randomize function on CD players.

15.   Regarding claims 2 and 12, **Cluts** additionally teaches a system and method comprising a user-operable means for holding an attribute value of a currently selected unit as a criterion for subsequent selections (see disclosure that subsequent selections can be based upon the attributes of a currently selected information unit through the use of the 'More Like' function, col. 14, lines 12-27).

16.   Regarding claim 3, Cluts additionally teaches a system wherein said attribute value is defined

with respect to a first attribute, said attribute means being adapted to determine a set of valid

attribute values for a further attribute in dependence on said criterion (see disclosure of a first

attribute value "Rock", and the set of valid attribute values of a further attribute "1970s Rock",

"1980s Rock", "1990s Rock", "Soft Rock", "Acid Rock", "Heavy Metal", etc., at col. 20, lines 33-44;

see also col. 21, lines 57-62).

17.   Regarding claim 4, Cluts additionally teaches a system wherein said first attribute

representing a genre of said information units and said further attribute representing a sub-genre of

said information units (see disclosure of a first attribute value "Rock", and the set of valid attribute

values of a further attribute "1970s Rock", "1980s Rock", "1990s Rock", "Soft Rock", "Acid Rock",

"Heavy Metal", etc., at col. 20, lines 33-44; see also col. 21, lines 57-62).

18.   Regarding claim 5, Cluts additionally teaches a system wherein said information units

comprise audio and/or video information (see col. 4, line 55 through col. 5, line 2).

19.   Regarding claim 9, Cluts additionally teaches a system wherein the attribute means is

adapted to determine a distance between a pair of attribute values, the random selection means

being capable of selecting a unit from units whose attribute values have a relatively large distance to

attribute values of an earlier selected unit (see col. 16, lines 1-20).

20.   Regarding claim 13, **Cluts** additionally teaches a computer program product for causing a

programmable device, when executed on said device, to constitute a system as claimed in claim 1

(see col. 5, lines 3-55).

21.   Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Cluts** (U.S. Patent

5,616,876) in view of **Looney et al.** (U.S. Patent 5,969,283) as applied to claims 1-5, 9 and 11-13

above, and further in view of **Dunning et al.** (U.S. Patent Application Publication 2003/0229537).

22.   Regarding claim 6, **Cluts** and **Looney et al.** teach a system for browsing a collection of

information units substantially as claimed.

Neither **Cluts** nor **Looney et al.** explicitly teaches a system further comprising user-

operable skip means for controlling the random selection means to abort the presentation of the

currently selected unit and to skip to a randomly selected alternative unit whose attribute value

meets said criterion.

Dunning et al., however, teaches a system further comprising user-operable skip means for

controlling the random selection means to abort the presentation of the currently selected unit and

to skip to a randomly selected alternative unit whose attribute value meets said criterion (see

paragraphs [0117], [0140] and [0253]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to

provide the ability to skip units, since a user might not enjoy the unit being presented, and this

functionality would allow the user to avoid being forced to endure the entire presentation (see paragraph [0256]).

23.   Regarding claims 7 and 8, **Cluts** and **Looney et al.** teach a system for browsing a collection of information units substantially as claimed.

Neither **Cluts** nor **Looney et al.** explicitly teaches a system wherein said skip means is capable of removing at least one criterion in dependence on a mode of operation of said skip means, said removing being determined by an iterated and/or prolonged operation of said skip means.

Dunning et al., however, teaches a system wherein said skip means is capable of removing at least one criterion in dependence on a mode of operation of said skip means, said removing being determined by an iterated and/or prolonged operation of said skip means (see disclosure that the user's activities, including the tracks that are skipped, are logged, and the logged actions are then used to modify the preferences that are used as criteria for subsequent selection of music tracks, paragraphs [0117], [0140] and [0253]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to provide for the removal of criteria based on a user's skipping of tracks, since the assumption is that if a user skips a track, he/she did not enjoy that track, and if the user skips many tracks with a particular common characteristic, then is would be a good assumption that the user does not enjoy tracks that share that characteristic (see paragraph [0256]).

Allowable Subject Matter

24.   Claim 10 is objected to as being dependent upon a rejected base claim, but would be

allowable if rewritten in independent form including all of the limitations of the base claim and any

intervening claims.

25.   The following is a statement of reasons for the indication of allowable subject matter:

The present invention is directed to a system for browsing a collection of information units,

wherein information units are randomly presented to the user, based on whether or not they meet

user-defined attribute criteria. One embodiment of the invention is a system for distributing music

or video files over the Internet, and wherein a randomization function is provided through a slot-

machine-like graphical user interface.

The closest prior art of record, **Cluts** (U.S. Patent 5,616,876) teaches an interactive network

that provides music to subscribers, and includes a "more like" function that allows subscribers to use

a seed song to identify other songs that are similar to the seed song and add the new songs to the

playlist.

However, **Cluts** fails to anticipate or render obvious the recited feature of <u>a means for</u>

<u>displaying a simulation of a slot machine having at least one column comprising a plurality of</u>

<u>randomly selectable attribute values, wherein each of the at least one column corresponds to an</u>

<u>attribute, and activation means for activating the random selection of an attribute value in at least</u>

one of the at least one column, the operation of said simulated slot machine representing said

random selection, as in dependent claim 10.

Response to Arguments

26. Applicant's arguments filed 25 May 2004 have been fully considered but they are not

persuasive.

27. In response to the Applicants' argument that the **Cluts** reference fails to teach the claimed

automatic random selection and presentation, the new **Looney et al.** reference has been

incorporated into the rejections to address the new limitation.

28. In response to the Applicants' argument that the **Cluts** reference teaches away from the

newly claimed limitation, the examiner respectfully responds that this is not the case. There are

many comparable systems, such as that disclosed in the **Looney et al.** reference, that includes the

playlist features of **Cluts**, while also including the claimed feature of random playback. The fact that

this combination of features is included in other systems is evidence that the **Cluts** reference does

not teach away from the newly claimed limitation, and furthermore provides evidence that the

incorporation of such a feature would have been obvious to an ordinary artisan at the time of the

invention.

Conclusion

29.   Applicant's amendment necessitated the new ground(s) of rejection presented in this Office

action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is

reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS

from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the

mailing date of this final action and the advisory action is not mailed until after the end of the

THREE-MONTH shortened statutory period, then the shortened statutory period will expire on

the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

calculated from the mailing date of the advisory action. In no event, however, will the statutory

period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luke S. Wassum whose telephone number is 571-272-4119. The examiner can normally be reached on Monday-Friday 8:30-5:30, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Breene can be reached on 571-272-4107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Luke S. Wassum
Primary Examiner
Art Unit 2167

lsw
15 October 2004